

Memorandum

To: Honorable Betty T. Yee, Chairwoman
Honorable Bill Leonard
Honorable Michelle Steel
Honorable Jerome E. Horton
Honorable John Chiang

Date: September 17, 2009

From: Kristine Cazadd
Chief Counsel

Kristine Cazadd/RMF

Subject: Other Chief Counsel Matters – October 6, 2009

Item Number M
Supreme Court Grant of Review
Court of Appeal Opinion
Amicus Curiae Brief

Loeffler et al. v. Target Corp.
Los Angeles County Superior Court Case No. BC36004
Second Dist. Ct. of Appeal No. B199287
Supreme Court No. S173972

I am writing this to inform you that on September 9, 2009 the California Supreme Court granted review of the appellate opinion in favor of the Board's position in *Loeffler*. We are requesting that, pursuant to the authority earlier granted by the Board to participate in this case as *amicus curiae*, the Legal Department now be authorized to file an Application to File an *amicus* Brief, and the brief itself, with the California Supreme Court.

The facts of the *Loeffler* case are as follows: (1) a class action law ~~firm~~ sued Target under consumer protection laws alleging that Target was illegally charging sales tax – that is, collecting sales tax reimbursement – on sales of hot coffee in its stores; (2) the Board was not named as a party in the lawsuit; (3) the coffee purchasers could not be, and were not, individually identified in the lawsuit; and (4) in the lawsuit, Target argued, among other things, that the tax refund statutes apply and take precedence in consumer actions even if the Board is not named and not involved. The trial court agreed with Target that the plaintiffs **had** no standing to bring what was, in essence, an action for tax refunds. The plaintiff appealed.

When the appeals court asked for additional briefing, the Department of Justice (DOJ) determined that it would file an *amicus* brief reflecting DOJ's **own** position that consumer

protection laws could be used to adjudicate matters relating **to** sales taxes. For that reason, the Board authorized the Litigation Division to file an *amicus* brief opposing the positions taken by the DOJ. The brief was **filed** on December 14, 2008. Because the Board did not have the assistance of the DOJ, Tax Counsel IV John L. Waid argued the case in support of the Board's positions.

After the ~~trial~~ court granted Target's demurrer without leave to amend, the parties appealed. The court invited *amicus* briefing from the Department of Justice (DOJ). The DOJ took a position opposite to that which it had previously advocated on behalf of the Board during litigation, so the Board had to brief and argue its position by itself. Oral argument ~~was~~ held on February **11, 2009**. On May 12, 2009, the Court of Appeal issued its opinion affirming the rulings of the trial ~~court~~ in full. In doing so, it endorsed the Board's position regarding the recovery of sales tax reimbursement as briefed in the Board of Equalization's *Amicus Curiae* Brief in Support of Respondent Target Corporation.

Plaintiff/Appellant filed a Petition for Review with the California Supreme Court on June 19, 2009. The Board filed a letter brief requesting the court **to** deny review on July 9, 2009. Target filed a brief in opposition, **and** other *amici*, including the Attorney General, filed briefs in support. Petitioner's brief is due October 9, 2009. The Board's brief is not due until 30 days after all briefs that the parties may file have been filed.

No action is required of the Board at this time.

Mr. John Waid, **Tax** Counsel IV, is the Litigation Division attorney assigned to this case. He can be reached at (916) 324-3828.

Approved:


Ramon J. Hirsig
Executive Director

KC:JLW:ds

cc: (w/ Attachment)

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